AN

# OUTLINE

OF THE

# HISTORY AND CONSTITUTION

OF THE

# COURTS AND LEGISLATIVE AUTHORITIES IN INDIA.

WITH

**Calcutta University Question Papers.**

FOR B. L. CANDIDATES.

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By A Yakil.

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## CHAPTER I.

### *Important Legislative Enactments for British India.*

**The East India Company.**—In 1600 Queen Elizabeth granted a charter incorporating the London East India Company. In 1698 another Company was incorporated under authority of an act of Parliament under the name of the English East India Company. In 1708 the two Companies were united under the award of Lord Godolphin. The Court of Directors was constituted, and the General Court of Proprietors was vested with the chief authority and control over the affairs of the Company

In 1601, 1609 and 1661 in the Company's charter,

power was granted to the Governor and Company to make laws for the good government of the Company and of all its officers, and for the better advancement and continuance of their trade and traffic. They were also empowered to put these laws in force and to revoke them at their pleasure. But the laws should be reasonable and not contrary, or repugnant to the laws of the realm. In these charters granted by the Crown, power was given to the Company in a general and undistinct way to administer justice to those who should live under them. In the charter of 1661, power was given to the Governor and Council to judge all persons belonging to the Governor and Company, or that should live under them, in civil and criminal causes according to the laws of England. In 1683 power was granted to establish a Court of Judicature to consist of one person learned in the civil laws, and two merchants, all to be appointed by the Company. In 1698 the Company were vested with the Government of all their forts, factories, and plantations, the sovereign power being reserved for the Crown.

**Mayor's Courts.**—After the united Company was established, at the application of its Court of Directors, the Crown in 1726 by Letters Patent, established Mayor's Courts at Madras, Bombay and Calcutta, each consisting of a Mayor and nine Aldermen, seven of whom with the Mayor were required to be natural born British subjects. They were declared to be *Courts of Record*, and were empowered to try, hear, and determine all civil suits, actions, and pleas, between party and party, and to grant probates of wills and administration to the effects of intestates.

By virtue of the same Letters Patent, each Local Government consisting of a Governor and Council, was constituted a *Government Court of Record*, to which appeals from the decisions of the Mayor's Courts might be made in all causes, involving sums under 1000 pagodas. In causes involving sums above that amount, an appeal lay from the Government Court to the King in Council The Government Court was further constituted a Court of Oyer and Terminer, and was authorized and required to hold quarter sessions for the trial of all offences, excepting high treason.

Court of Requests.—The charter of 1753 re-established Mayor's Courts at Madras, Bombay and Calcutta, with some amendments, and also established a *Court of Request* at each of the said places, for the determination of suits not exceeding five *Pagodas* in value. Both Courts were made subject to a control on the part of the Court of Directors. Suits between natives were directed not to be entertained by the Mayor's Courts unless by consent of parties

The Diwani of Bengal, Behar and Orissa.—In 1765, the *Diwani* of Bengal, Behar and Orissa, was obtained from the Moghul Emperor Shah Alam. This act is regarded as the acquisition of sovereignty by the English, The collection of revenue in India involved the whole administration of civil justice. The *Nizamut* or administration of criminal justice remained with the Nawab of Murshidabad

But the administration for the most part of the revenues, and still more of civil justice, was conducted through native agency till the year 1772. The country in the neigh-

bourhood of Calcutta, Burdwan, Midanapore, and Chittagong, was under the superintendence of European officers. But the remainder of the provinces was left under the immediate management of two native *Dewans*, one stationed at Murshedabad and the other at Patna, under the superintendence at their respective head quarters, of a European resident. In 1769, European local supervisors were appointed in subordination to the two residents, and in 1770, two Revenue Councils of control with superior authority were appointed, one at Murshidabad and the other at Patna. Criminal justice was left in the hands of native authorities. Mahommedan criminal law was in force administered by Mahommedan Courts.

In 1771, the Directors declared their resolution to stand forth as Dewan, and by the agency of the Company's servants, to take upon themselves the entire care and management of the revenues.

Dewani and Fouzdari Adawlats.—In 1772, Warren Hastings was transferred from Madras to Bengal, and the office of Naib Dewan was abolished. A committee of circuit was appointed consisting of the Governor and four members of Council. Mofussil Dewani Adawlats superintended by Collectors of revenue, were established in each District. These Courts took cognizance of all disputes, except questions of succession to the Zamindary and Talook-dary property, which were reserved for the decision of the Governor in Council. A Sadder Dewani Adawlat was established, presided over by the President and Council assisted by native officers, which exercised appellate

civil jurisdiction over the Mofussil Courts in all cases where the disputed amount exceeded Rs. 500.

Mofussil Fouzdari Adawlats were also established in each District. In these, Mahammadan Judges under the superintendence of Collectors of revenue, sat to hold trials. A Sudder Nizamat was also established at Murshidabad. It was transferred after a short time to Calcutta, then back again to Murshidabad in 1775, where it remained up to 1790.

The Regulating Act.—A variety of circumstances tended to draw the attention of the English Public to the state of Indian affairs. The general unpopularity of the returned servants of the Company, their wealth and ostentation, attracted attention, and induced the public mind to believe that the sudden creation of this wealthy class was due to great crimes and oppression. The strong prejudices thus excited, served to strengthen the hands of a few English statesmen, [especially Edmund Burke], who determined to bring the authority of Parliament into action to restrain the excesses of their countrymen in India, and to secure some measure of protection and good government to the territories they had acquired. A Committee of secrecy of the House of Commons was appointed in 1772 to carry out the general demand for investigation. They reported in 1773 that, though forms of judicature were established and preserved, the despotic principles of government rendered them the instruments of power rather than of justice, and often the means of the most grievous oppressions under the cloak of the judicial character

In consequence, the Regulating Act was passed in 1773, which provided that the Government of Bengal should consist of a Governor-General and four counsellors; and the Presidents and Councils of Madras and Bombay were rendered subordinate to the Governor-General and Council of Bengal, which was empowered to make Regulations for the good order and civil government of the Company's settlements in India These Regulations were not to have any force until they were registered in the Supreme Court, with the consent and approbation of the said Court

The Act also established the Supreme Court, with authority over those who were personally subject to the Crown, consisting of a Chief Justice and three judges [subsequently reduced to a Chief Justice and two judges], who were to be appointed by the Crown and to be barristers of England of not less than 5 year's standing The charter of the Court dates 1774. It authorised the Court to try all actions and suits against the Company's servants, or subjects residing in Bengal, Behar and Orissa, and to try any action or suit against every other inhabitant of India residing in Bengal, Behar and Orissa upon any contract entered into by any of the said inhabitants with any of His Majesty's subjects, where the cause of action exceeds Rs 500, provided the said inhabitant had agreed that in case of dispute, the matter shall be determined in the Supreme Court It had given it besides Criminal, Ecclesiastical, Equity, and Admiralty powers In civil cases an appeal lay, as in the case of other colonies, to the Privy council In criminal cases power of appeal was also given, but subject to considerable restrictions. The

Mayor's Court in Fort William was abolished The Adawlats established under the plan of Hastings derived their authority from the Company

Quarrel between the Supreme Court and the Supreme Council.—Thus there were established in India two independent and rival powers, viz. of the Supreme Court and of the Supreme Council the boundaries between them being utterly undefined, one deriving its authority from the Crown, and the other from the Company. The Court issued its writs, arrested and brought to Calcutta all persons (whatever their rank or consequence be in the country), against whom complaints were lodged. Defaulters to the revenue were set at liberty on *habeas corpus*, and the production in Court, of papers containing the most secret transactions of Government was insisted upon. Its interference destroyed the authority of the Provincial Courts, and reduced the collection of revenue,—a thing almost impossible Decrees also brought for land decreed in the Dewani Adawlats, and prosecution was carried on by the Supreme Court against the judges of the Revenue and Civil Courts, for acts done in the regular performance of their business, and by those means, the course of civil and criminal justice was entirely suspended.

In 1779, the quarrels and disputes reached a crisis The Raja of Cassejurah absconded to avoid a process of the Supreme Court, and the Supreme Court proceeded to sequester his lands and effects. The Governor-General and Council instructed the Raja not to obey the Court, and ordered the troops to intercept the party of the Sheriff

and issued a notification to the natives of the three provinces of Bengal, Behar and Orissa, not to obey the Court, except in the two cases of their being British servants, or bound by their own agreement. But the Company's attorney was, by the orders of the Supreme Court, arrested and thrown into prison, and the Governor General and Council were at last individually served with a summons. They declined to appear, and a petition signed by the principal British inhabitants in Bengal, went home to Parliament, against the exercise which the Supreme Court was making of its power.

The intention in passing the Regulating Act was to have secured to the Crown a supremacy in the whole administration of justice, but the provisions, viz. the making the Legislature subordinate to the Court, and at the same time directing the Court to enforce a system of law utterly inapplicable in India, independently of, or in opposition to, the Government which was at the same time weakened by divisions, were inadequate to the attainment of the object and have been defeated. It may be said in justification of the judges, that there was not that cooperation which they had expected from the Government. The chief obstacle the Court encountered, was the upholding of the Zamat under the Nawab and his native officers in a state of complete independence of it, and the transferring of the Nizamat Adawlat from Calcutta to Murshidabad immediately after the Court began to exercise its powers; that they were English lawyers sent out expressly to administer English Law, and had never heard of Hindu or Mahommedan Law, and to ignorance may be origin of their indiscretion and intemperance.

**The Act of 1781.**—In consequence of the petition aforesaid, came the Act of 1781. It declared that the Supreme Court should not have any jurisdiction in matters concerning the revenue. That no person should be subject to it by virtue of possessing any interest in lands or rents in Bengal, Behar and Orissa Employment by the Company, or the Governor-General and Council, or by an Englishman, only brought the employe under the Court's jurisdiction in matters of wrongs and trespasses, and in civil suits by agreement of parties. No suit lay in the Supreme Court against any officer in Country Court for acts done in the performance of his duty. The Governor-General and Council were exempted for anything done in the execution of their office, so also was any person acting according to their orders. In suits against the inhabitants of Calcutta, questions of Succession Inheritance, Contracts, &c. were to be determined, in the case of Hindus by the laws and usages of the Hindus, and in case of Mahommedans by the laws and usages of the latter, and where only one of the parties was a Hindu or Mahommedan, by the laws and usages of the defendant. The Supreme Court was given power to frame processes suitable to the religion and manners of the natives, which were to be subject to the royal approbation, correction, or refusal.

The Act recognized the Civil and Criminal Provincial Courts existing independently of the Supreme Court, and the Governor-General and Council, as the chief appellate Court of the county, with power to frame Regulations for the Provincial Courts independently of the Supreme Court. The judgments given in this Court were to be

final, except upon appeal to His Majesty in civil suits only, the value of which shall be £. 5000, and upwards. Copies of the Regulations were directed to be transmitted to the Court of Directors for approval or amendment. In Bengal, a Revised Code was issued in the same year.

Thus the year 1781 is a notable date in the history of the Indian Legislation From it, commenced the era (1) of independent Indian Legislation, (2) of the authority of the Supreme Court, as it continued for 80 years, (3) of the establishment of a Board of Revenue, entrusted with the charge and administration of all the public revenues of the provinces, (4) of the recognition by Act of Parliament of the established Sudder and Provincial Courts, and (5) of the recognition by Act of Parliament, and in the Revised Code of Bengal, of the right of Hindus and Mahommedans to be governed by their own laws and usages.

Legislation.—In 1772, the most important exercise of the legislative power granted by Parliament to the Company, took place. The President and Council of Bengal made certain Regulations for the administration of justice, by virtue of which certain Courts were established in Bengal with rules of procedure and law. The Regulating Act defined the extent of the legislative authority of the Governor-General and Council, and placed it under the supervision and subject to the veto of the Supreme Court. But no enactments of any importance were passed till 1780, when the Governor-General and Council passed certain Regulations for the more effectual and regular administration of justice in the Provincial Civil Courts, and

confirmed and amended all existing Regulations respecting Sudder and Provincial Courts. In 1781 a Revised Code was issued

The Act of 1781 empowered the Governor-General and Council to frame Regulations for the Provincial Courts independently of the Supreme Court, copies of which were to be transmitted within six months, to the Court of Directors, and to the Secretary of State, and if not disallowed within two years, were to be of force and authority. The Supreme Court was not however bound by any Regulations unless registered by it, as directed by the Act of 1773, till 1838 when an Act was passed doing away with the registration.

In 1797, an Act was passed which recognized all the Regulations made by the Governor-General and Council as valid, though it is doubtful, whether many of them were not originally *ultra vires*. It directed that all Regulations affecting natives, should be formed into a Regular Code, and printed with translations in the country languages and that the grounds of each Regulation should be prefixed to it.

**The Legislative Power of the Governors and Councils of Madras and Bombay.**—In 1800 the Governor and Council of Madras were empowered to make regulations for the Provincial Courts. In 1807, the same was done for Bombay. It does not appear that the Governor-General exercised any direct authority over the Governor and Council of Madras or Bombay, in their [illegible] making laws. He had control over them [illegible] matters, under the Act of 1773, and in [illegible] and all cases [illegible] under the Act of [illegible] the first

Act of 1813—In 1813, the Governor General and the Governors and Councils of Madras and Bombay were empowered by ▬ Act to impose duties and taxes within the towns of Calcutta, Madras and Bombay for the enforcing of which taxes, Regulations were directed to be made in the same manner ▬ other Regulations. These were not to be valid, until they were sanctioned by the Court of Directors and Board of Commissioners All persons repairing to the East Indies, were to be under the Regulations. They were also empowered to make Laws and Regulations, and Articles of war, for the order and discipline of officers and soldiers, and for the administration of justice by Courts-Martial. They were also authorized to impose duties of customs.

They enacted Laws and Regulations till 1884. Down to that date, there ▬▬ five different bodies of Statute law in force in the Empire,—

(1) English Statute law, existing in 1726 as far ▬ applicable,

(2) English Acts subsequent to that date, which are expressly extended to any part of British India

(3) Regulations of the Governor-General's Council, which commence with the Revised Code of 1793, only having force in the territories within the Presidency of Bengal.

(4) Regulations of the Madras Council having force in the Presidency of Fort St. George.

(5) Regulations of the Bombay Council having force [illegible] idency of Fort St. David.

when the Gover[illegible]888.—Accordingly, the Act of William IV. Regulations for th[illegible]d, by which the Governor-General and tration of justice [illegible]owers given them to make General Laws

and Regulations for the better government of His Majesty's Indian territories, and to repeal, amend, or alter any existing Laws or Regulations, provided they should not make any alteration in the Martial law, or make any law affecting the prerogative of the Crown, or the authority of the Parliament, or any part of the common law on which English subjects allegiance depended

The Act contained four provisions relative to legislation :—

(1) In case of any disallowance by the Court of Directors, the Governor-General shall repeal all Laws and Regulations so repealed.

(2) All such Laws and Regulations should have force in all parts of British India

(3) The Governor General shall not, without the sanction of the Court of Directors, make any laws, authorising any Court of justice not established by Royal Charter, to sentence to death any of His Majesty's natural born subjects born in Europe, or the children of such subjects.

(4) The Court of Directors had to submit for the approbation of the Board, rules regulating the procedure of the Governor-General and Council, and prescribing the modes of promulgation of any Laws or Regulations to be made by them.

An express preservation was made of the right of Parliament, to continue to legislate for all the inhabitants of British India Indian Law-Commissions were established, and Local Legislatures superseded, the Governor-General having power to propose drafts or projects of any statutary or Regulations which they might think expedient, to be first

there was established in India, one central legislative authority, (in place of the three Councils), having authority to pass Laws and Regulations for the whole British territories in India. The Act also added to the Council a new legal member, who needed not be chosen from among the Company's servants, and who was entitled to be present only at meetings for making Laws and Regulations.

**The Act of 1853.**—In 1853, an Act was passed to enlarge the Council by the addition of new members, of whom two were Judges of the Supreme Court, and the others were appointed by the Local Government. Consequent upon these changes, discussion became oral instead of in writing, bills were referred to select committees instead of a single member, and legislative business conducted in public instead of in secret. The Governor-General's assent necessary for the enforcement of any Law or Regulation, whether he had or had not been present in Council, at the making thereof. No Law or Regulation should be invalid by reason only, that it had affected any prerogative of the Crown, provided it had received the previous sanction of the Crown.

Under the former Act, the power of making laws was vested in the Governor-General and four ordinary members of Council, three of whom were appointed from persons in the Covenanted service, and the fourth from persons who had never been in the service. The duty of fourth member was confined entirely to the subject of ation. He had power to sit and vote in the ve council. By the new Act, he was made a member xecutive branch, as well as, in the legislative branch,

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and the duties which under the former Act, rested on him principally, were required to be performed by many. The Governor of each Presidency and the Lieutenant-Governor of each Lieutenant-Governorship were empowered to appoint a Legislative Councillor. By the new Act, the Legislative Council was increased by members of practical experience. In addition to the Legislative Councillor, the Chief Justice of Bengal and [illegible] of the Puisne Judges of the Supreme Court were also members; and six members in addition to the Governor-General, or the Vice-President, or Chairman, were necessary to form a *quorum*, and the presence of one of the Judges, or of the fourth ordinary member, was rendered essential.

**The Act of 1858.**—The Act of 1858 finally transferred the administration from the Company to the Crown. It enacted, that India shall be governed by, and in the name of the Queen, through one of her principal Secretaries of State, assisted by a Council of 15 members. The Governor-General received the new title of Viceroy.

**The Indian Council's Act.**—Lord Canning was dissatisfied with the changes made by the Act of 1858, and objected that the Council was assuming the character of a representative and debating society. He advocated also the policy of decentralisation. But the event which immediately led to the passing of the Indian Council's Act 1861, were the differences, which arose between the Supreme Government and the Government of Madras, on the Income Tax Bill, and the doubts, as to the validity of laws introduced into Non-regulation Provinces, without enactment by the Legislative Council.

It was directed by the Act, that the Governor-[illegible]ctel[illegible]ntary[illegible]re first

should summon, in addition to the ordinary members of the Council, not less than six, nor more than twelve, additional members, Europeans or Natives, of whom half at least, shall not be office-holders. The Legislative Council has no power to transact any business, other than the consideration and enactment of measures, introduced into the Council for the purpose of such enactment The previous sanction of the Governor-General was necessary, before any measure [redacted] be introduced into the Council affecting —

(1) The public debt or public revenue of India.

(2) The religion, or religious rites and usages of any class of Her Majesty's subjects in India.

(3) The discipline or maintenance of the army.

(4) Foreign relations.

The Governor-General's consent was necessary to the validity of any law, subject to its disallowance by Her Majesty The Legislative powers of the Council extend (1) to repeal, amend, or annul any Regulation in force, excepting Acts of Parliament passed after 1860, or the unwritten constitution of Britain, (2) to make laws for all persons in British Indian Territories.

In cases of emergency, the Governor-General was empowered to make, by himself, laws which should only remain in force for six months, and might be earlier disallowed by Her Majesty, or controlled, or superseded by a law of the Legislative Council.

But no, The same Act vested in the Governors of the Presidencies of Madras, and Bombay, similar power to when there is Regulation ate, in addition to the ordinary members, certain tiation of who should be entitled to sit and vote at the

meetings, and to make laws for the government of those Presidencies In order a law should be valid, it was necessary that it should be assented to by (1) the Governor, (2) the Governor General, subject to its disallowance by Her Majesty. The previous sanction of the Governor-General was necessary, before such Councils can take into consideration any Laws or Regulations for any of the following purposes —

[1] The public debt or public revenue of India.

[2] The Mint.

[3] The conveyance by Post Office or telegraph, within the Presidency.

[4] Penal code.

[5] The religion or religious rights and usages.

[6] The army.

[7] Patents or copyright.

[8] Foreign relations.

It was further provided, that no law shall be deemed invalid, only by reason of its relating to any of the purposes, comprised in the above list, if assented to by the Governor General.

Power was given to the Governor-General in Council to establish other Local Legislatures by proclamations. Accordingly, a proclamation was issued constituting the Bengal Legislative Council in 1862 These Local Legislatures have no power to control, or affect by their acts, the jurisdiction of the High Courts.

# CHAPTER II.

## *The Presidency Town System*

**The Supreme Court**—The judicial institutions established in British India by the Crown and Parliament, before the introduction of the High Courts, were originally intended for the benefit of the Company's factories, and subsequently for the Presidency Towns, though they had a partial jurisdiction in the Mofussil. Foremost amongst these, [redacted] the Supreme Court at Calcutta, which exercised a separate jurisdiction from the Company's Court, up to 1862.

In 1784, an Act was passed giving the Supreme Court criminal jurisdiction over British subjects in Native States. In 1786, this jurisdiction was extended to any part beyond the Cape of Good Hope, and the Straits of Magellan, within the limits of the Company's trade. Admiralty jurisdiction on the High Seas, was given in 1798, and later on, the jurisdiction was extended to all persons whatsoever, and Sessions were also ordained four times [redacted] year. In 1801, the power of the Supreme Court [redacted] extended to and over the Province of Benares. At [redacted] period, it had 5 jurisdictions, viz,—Civil, Criminal, when the [redacted]ty, Ecclesiastical and Admiralty. An appeal lay to Regulations [redacted]vy Council [redacted] all suits when the amount in dispute, [redacted]tation of [redacted] value of Rs. 100,00.

**Courts in Madras and Bombay.**—In Madras and Bombay, the Mayor's Courts established in 1753, existed till 1797. They were replaced by the Recorder's Courts, being in fact the old Mayor's Courts, with the addition of a Recorder They had full civil, criminal, ecclesiastical, and admiralty jurisdiction, as that of the Calcutta Supreme Court. Restrictions corresponding to those imposed by Parliament in 1781 on the jurisdiction of the Supreme Court, were made applicable to these Recorder's Courts. In 1301, Madras got a Supreme Court, and Bombay in 1823 In the latter's charter, was a clause prohibiting it from interfering with revenue cases, even within Bombay. A dispute arose between the Court and the executive, concerning its right to issue a *Habeas corpus* for a Hindu boy in Puna, and for a prisoner imprisoned by a Company's Court. In both cases, the Privy Council decided in favour of the executive.

**Courts of Requests**—Besides the Supreme Courts, there were others belonging to the Presidency System. Courts of Requests were established in 1753, and were empowered to try suits up to 5 pagodas Their jurisdiction was extended to Rs 80 in 1797, and in 1800, they were allowed, if specially sanctioned by the Government, to try up to Rs 400 These Courts were made subject to the order and control of the Supreme Courts. These Courts were in 1850, superseded by Small Cause Courts.

**Justices of the Peace**—The next judicial officers, who formed part of the Crown, or Parliamentary system, were the Justices of the Peace. They were first

ablished at Madras, Bombay and Calcutta in 1726 by charter of George I, which appointed the Governors and Councils of those places to be Justices of the Peace with power to hold quarter Sessions. The Regulating Act made the Govovernor-General and Council and the Supreme Court Judges, Justices of the Peace in Fort William In 1793, the Governor General in Council were empowered to appoint Justices of the Peace from the Covenanted servants of the Company. In 1832, the Governments of the three Presidencies were empowered to appoint any person in British India, not being subject of a foreign state, a Justice of the Peace. The classes subject to them were —

(1) All persons in respect of offences committed within the limits of the ordinary jurisdiction of the Supreme Court.

(2) All British subjects, except as regard crimes and offences triable by a jury; and British officers and soldiers at places more than 120 miles from the seat of Government.

(3) All persons who had committed offences or crimes at sea.

(4) Residents without the jurisdiction of the Supreme Courts in certain cases.

Magistrates of Police for the Presidency Towns were appointed in 1856. It was required that they should be previously made Justices of the Peace. By the Code of Criminal Procedure passed in 1861, and previously thereto, European British subjects could only be committed, or held to bail, for trial by a Justice of the Peace A

Magistrate not being a Justice of the Peace, could only hear the complaint, issue a warrant of arrest, and hold him to bail, with a view to the complaint being investigated by a Justice of the Peace The functions of a Justice of the Peace were :—

(1) Summary trials.

(2) Investigation of charges with a view to the committal or discharge of the accused person.

(3) Prevention of crime and breaches of the peace.

Coroners.—In 1793, the Governors and Councils in their respective Presidencies, were empowered to appoint certain British subjects to be Coroners The Judges of the Supreme Courts were made Coroners, as well as, Justices of the Peace in their respective Presidencies.

Jurisdiction of the Company's Civil Courts over European British Subjects.—In 1813, it was enacted that civil actions brought by Natives against European British subjects, should be heard in Civil Courts of the Company, provided that an appeal should lay in the Supreme Court, in cases where Natives had the right of appeal to the Sudder Court. In 1880, the last provision was repealed No further step was taken towards a uniform administration of civil justice, till the union of the Sudder and Supreme Courts.

The general exemption of Europeans from the criminal jurisdiction of the Provincial Courts, has remained till the present day. The Criminal Procedure Code, and the Indian High Court's Act passed in 1861, recognise

and preserve that exemption By the Statute of George III. in 1813, however, the Magistrates in the Provinces were authorized to act as Justices of the Peace, and to have jurisdiction over European British subjects out of the Presidency Towns, in certain criminal cases, and also in cases of small debts due by them to Natives

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## CHAPTER III

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### *Provincial Civil Courts.*

**Separation of the judicial and Fiscal authority** —When Warren Hastings started his scheme of civil administration in the provinces, he united the judicial and fiscal authorities in the Collector's hands. In 1775 the majority of the Governor's Council made over the revenue work to six *Provincial Councils*, appointed for the divisions of Calcutta, Burdwan, Dacca, Murshidabad, Dinagepore, and Patna, and the judicial work to six *Native Amils*, in place of the Collectors. From these Amils, an appeal lay in every case to the new Provincial Councils, and thence to the Governor and Council as the Sudder Adawlat. The majority of the Council also restored Mahommad Reza Khan to the high office of Naib Subah, which in effect, recognised the existence of the Nabob's government. He was removed again in 1778.

In 1780, Regulations were passed in pursuance of the legislative authority granted by the Regulating Act, which confined the jurisdiction of the Provincial Councils exclusively to revenue matters, and established *District Courts of Dewani Adawlats*, 18 in number, within the jurisdiction of the Provincial Councils, but to exercise jurisdiction independently of the Councils. Regulations for their guidance, were drawn up by Sir Elijah Impey, and incorporated in a Revised Code. The ultimate appeal lay to the Sudder Dewani Adawlat, which not only heard appeals, but regulated the proceedings of the lower Courts. Shortly after this distinct separation of civil justice from revenue collection, the Supreme Court was deprived of the right to interfere in revenue matters.

In 1781, the Chief Justice of the Supreme Court was appointed Judge of the Sudder Dewani Adawlat, and was vested with all its powers. The Governor-General in Council who previously formed that Adawlat, ceased to belong to it; but it was stipulated, that the Chief Justice should enjoy the office and salary at his pleasure. In the same year, the Sudder Dewani Adawlat was constituted a Court of Record. In 1782, the Court of Directors sent out orders to the Governor-General in Council, to resume the superintendence of that Court

Adawlats established under the plan of Cornwallis.—Lord Cornwallis in 1787, directed the re-union of the functions of civil and criminal justice, with those of the collection and management of the revenue. He placed the Dewani Adawlats under the superintendence of the Collectors He resumed the superintendence of

the administration of Criminal justice, and removed the Nizamut Adawlat from Moorshedabad to Calcutta. In 1793, Cornwalis reverted to the old system, separating the collection of revenue from the administration of justice, which were thenceforth confided to separate officers. The Collectors were thenceforth entrusted with the collection of the revenue payable to Government, as executive officers, subordinate to the Board of Revenue. The Government divested itself of the power of interfering in the administration of the Laws and Regulations in the first instance, reserving, as a Court of Appeal or Review, the decision of certain cases in the last resort, and lodged its judicial authority in Courts of justice.

Courts of Dewani Adawlats were established in 23 zillas and 8 cities The Suddur Dewani Adawlat was established at the Presidency, and consisted of the Governor-General and member of the Supreme Council. It received appeals from the Provincial Courts and Councils, and from the Board of Revenue. In 1801, it was made to consist of three judges, to be selected from the Covenanted servants, and in 1811, of a Chief Judge, and as many Puisne Judges as the Governor-General in Council should think necessary.

Four Provincial Courts were established within the provinces of Bengal, Behar, and Orissa, for the purpose of hearing appeals from the several Zilla and City-Courts, the Suddur Dewani Adawlat being vested with appellate jurisdiction, and general power of supervision over the inferior Courts, in all suits above Rs. 1,000. By later

Regulations, two more Provincial Courts were established, one for the Province of Benares, and the other for the Ceded Provinces.

Below the City and Zilla Courts, were two classes of inferior Judges First in order, the Registers of those Courts, who when authorised by the Judges, were empowered to try and decide causes for amounts not exceeding Rs. 200, their decrees not being valid, until revised and countersigned by the Judge The next and lower grade Judges were the native Commissioners, empowered to try causes up to Rs. 50. Of those officers, the head Commissioners were called *Suddur Amins*, and the rest *Moonsiffs*.

In 1831, Moonsiffs were invested with power to try and determine suits for money and other personal properties of the value of Rs 300, and suits with regard to land, of the value of Rs. 300, except such land as was exempt from the payment of revenue The Judges were empowered to refer to the Suddur Amins, any suits, the value of which did not exceed Rs. 1,000 Principal Suddur Amins were also authorised to be appointed, to whom suits might be referred not exceeding Rs. 5,000. Register's Courts were abolished ; Provincial Courts of appeal were gradually superseded, and in two years finally abolished; and original jurisdiction was given to the Judges in all suits exceeding in value Rs. 5000, with an appeal direct to the Sudder Dewani Adawlat.

Judicial functions of the Collectors.—In 1794, Civil Courts were empowered to refer cases to the Collectors, who were bound to send in their report,

which the Judges might confirm or set aside. This was the commencement of a re transfer to the Collectors of judicial functions. In 1795, summary procedure was allowed for claims to arrears of rent. Regulation VII. of 1799—the basis of summary suit law for a long time—enforced the strictest observance of the rule laid down in 1793, that the Civil Courts were to give priority to rent and revenue cases Again in 1812, a summary remedy was given to the ryot against his landlord, in all cases in which he was aggrieved by distress for rent. Such cases were ordered to be referred to the Collector. In 1824, Collectors were empowered to hear and determine by a summary process, and subject to a regular suit in the Civil Courts, all rent suits which might be referred to them by the Judges, and the same power was given them for compelling the attendance and the examination of witnesses, and generally for all processes, except execution of their decrees which was confided to the Civil Courts. The Regulation of 1831 deprived the Judges of all jurisdiction over summary suits relating to rent, and transferred them to the exclusive cognizance of the Collectors, whose decisions were to be final, subject to a regular suit to be brought in the Civil Court.

Act X. of 1859 enacted that the following suits should be cognizable by the Collectors, and except in the way of appeal, should not be cognizable in any other Court :—

(1) Suits for the delivery of Pattas and Kobooleuts

(2) Suits for damages, on account of the illegal exaction of rent, unauthorised cess, &c.

(3) Suits for enhancement or abatement of rent.

(4) Suits for arrears of rent,

(5) Suits for ejectment or cancelling a lease for non payment of rent, or for breach of conditions of any contract involving a liability to ejectment, or cancelment of a lease.

(6) Suits to recover the occupancy of a land.

(7) Suits arising out of the exercise of the power of distraint, conferred on Zamindars.

(8) Suits against agents, employed by Zamindars for receipt of rent.

Deputy Collectors were placed under Collectors, and the latter under the Commissioners and the Board of Revenue Appeals were allowed from the Deputy Collector to the Collector, and from the Collector to the Commissioner. Orders passed in appeal by a Commissioner or a Collector, are not open to any further appeal, but the Board of Revenue or the Commissioners may call for any case, and pass such order as they think fit. A Collector's decree is not appealable if for money below Rs. 100, unless the decision involves some question of right to enhance rent, or some question relating to a title to land. Mr. Peacock and Sir Charles Jackson opposed the passing of the bill, on the ground that it invested the revenue authorities with power to try the suits between land-lord and tenant, and deprived the regular Civil Courts of their jurisdiction, notwithstanding that the suits might involve difficult questions of law and fact.

Ten years after, the Bengal Legislative Council passed Act VIII of 1869, which transferred to the cogni-

zance of the Civil Courts all suits which under the former Act, were made triable by the Collectors This Act, however, can only be put in force in the Lower Provinces, the Local Legislature having no power to pass laws for the North Western Provinces of the Bengal Presidency.

**Civil Courts, Special Appeals from their Decisions**—The powers of the Civil Tribunals had been gradually extended, so as to include European British subjects within their jurisdiction. In 1843, an Act was passed, enacting that the Sudder Courts should hear special appeals from all decisions passed in regular appeals in all Subordinate Civil Courts. In 1858, an Act was passed which repealed the Act of 1843, and provided that in all the three Presidencies, special appeals should lie to the Sudder Courts from any decision passed on regular appeal in any of of the Courts below, on the following grounds.—

(1) A failure to decide all the material points in the case, or a decision contrary to law.

(2) Misconstruction of any document.

(3) Ambiguity in the decision itself.

(4) Substantial error or defect in procedure, or in the investigation of the case.

No such special appeal was to lie on a matter of fact

Act VIII of 1859 codified the arrangement concerning procedure as to Zilla, Sudder Ameen, and Munsiffs Courts, which before were to be found in a multitude of Regulations from 1793 to 1831.

**Adawlat System in Madras and Bombay**—In Madras, the Adawlat system framed upon the plan

of Lord Cornwallis, was introduced in 1802. The Civil and Revenue Courts were kept distinct. The Registers had jurisdiction to try suits referred to them by the Judges. The Judges could decide finally in suits under Rs. 1000 in value There were four Provincial Courts of appeal, and the Sudder Court consisted of the Governor in Council, with an appeal from him in suits of the value of Rs 45000 to the Governor-General in Council. In 1806, the constitution of the Sudder Court was altered, and new judges appointed. In 1807 the Governor was declared to be no longer a judge. In 1816 heads of villages were appointed Munsiffs to try suits not exceeding Rs 10 in value, and also authorised to assemble village *punchayets* for the decision of those suits In 1843 the Provincial Courts of appeal were abolished. New Zilla Courts were established, and the jurisdiction of the Subordinate Judges and Principal Sudder Ameens, was increased so as to include all suits of less value than Rs 10000. These Courts had jurisdiction over Europeans, Americans, and Natives as well, and an appeal lay from these to the Zilla Judges.

In Bombay similar Adawlat system was introduced in 1794. In 1827, all the Bombay-Regulations passed previously to that year, were rescinded and a new code drawn up, based upon the Bombay-Regulations of 1799. In 1845 the appointment of Joint Zilla-Judges was authorised Act XIV of 1869 was eventually passed, which constituted the existing Civil Courts of Bombay.

Both in Madras and Bombay, the Revenue,-officers had the power of trying all rent-suits. From their decisions the appeal lay in the former Presidency to the Zilla Courts,

In the latter to the Sudder Court. In 1866 the Local Legislature at Bombay passed an Act to divest the Courts of Revenue of jurisdiction in cases relating to the rent of land, and the use of wells, tanks, water courses, &c, and to vest such jurisdiction in the Civil Courts.

## CHAPTER IV.

### *The Provincial Criminal Courts.*

**The Administration of Criminal Justice, and the Changes effected by Warren Hastings.**—The scheme for the administration of criminal as well a ofs Civil justice in Bengal is attributable to Hastings. The principle originally adopted, was to retain the Mahomedan law, law officers, and courts for the repression of crime subject to the supervision of the Government. Foujdari Adawlats were first appointed in Bengal for the trial of persons charged with crimes, pursuant to the Regulations passed by the President in Council in 1772. The Collectors of Revenue were directed to superintend the proceedings of the officers in those courts. A Sudder Nizamat Adawlat was established at Murshidabad, under the superintendence of a Committee of Revenue, for the purpose of revising the proceedings of the Provincial Courts in capital cases. The Sudder Nizamat Adawlat was transferred to Calcutta for a short time In 1775 it was sent back to Murshidabad, and the Mahomedan Nazim again superintended criminal justice.

Up to 1772, Zamindars were responsible for the public safety and the maintenance of the public roads. In that year, the Fouzdary jurisdiction of the Zamindars was transferred to the Adawlats, for *chakran* lands had been resumed. In 1774, Hastings divided Bengal for purposes of police, into fourteen different Districts Thannadars were appointed over them, landholders were enjoined to assist; and Foujdars were appointed to apprehend all offenders against the public peace. In 1781, the Foujdars and their subordinate Thannadars were abolished, and the Judges of the Civil Courts were invested with the power of apprehending and sending for trial, offenders before the Criminal Courts Subsequently, the Judges were vested with the authority to hear and decide complaints of slight offences. And in order to afford the Government some control over the penal jurisdiction of the country, a new office was established at the Presidency under the immediate superintendence of the Governor-General. To this office, report of proceedings, with lists of commitments and convictions were transmitted every month, and an officer under the Government-General with the title of the Remembrancer of the Criminal Courts, was appointed for the transaction of its affairs.

**The Sudder Nizamat Adawlat, and the Courts of Circuit.**—In 1790, the powers of the Nabab Nazim passed to the Governor-General in Council, and the system of criminal justice was entirely remodelled. The Sudder Nizamat Adawlat, consisting of the Governor-General and the members of the Council, was again removed to Calcutta in the [illegible] year. The Regulations, passed in 1790, were, with amendments and alterations,

reenacted in 1793. In 1801, the Court of Nizamat Adawlat as well as that of Dewani Adawlat, was directed to be composed of a Chief Judge and Puisne Judges, and from that time both Courts exercised their functions distinct from the Legislative and Executive authority of the State. In later years, the number of Judges of the Sudder Nizamat Adawlat was increased, as in the Sudder Dewani Adawlat.

Next in rank were the Courts of Circuit, superintended by English Judges, assisted by Natives versed in the Mahomedan law They were originally four in number, (subsequently increased in number) and were composed of the same Judges who sat in the Provincial Civil Courts of appeal, and of the Kazi and Mooftee attached thereto. The duties of the Court of Circuit, including the gaol-deliveries in the principal station, were in ordinary cases performed by the 2nd, 3rd, and 4th Judge in regular succession, the 1st Judge remaining at the principal station. These Courts of Circuit were considered to have failed to afford prompt administration of justice, and were abolished in 1829 and Bengal was divided into 20 divisions under 20 Commissioners of Revenue and Circuit, who were entrusted with the powers formerly vested in the Courts of Circuit, together with those belonging to the Boards of Revenue. The Governor-General in Council was empowered to direct any Commissioner, or Civil Judge to hold Sessions.

In 1831, the Magistrates were authorised to refer to the Sudder Ameens, any criminal case for investigation, although such Ameens were not authorised to make any commitment Zilla and City Judges, not being Magis-

trates, were empowered to hold Sessions, when ordered by the Governor-General in Council. In 1832, provision was made for referring suits to a *Punchayet*, or for constituting assessors to assist the Judge, the decision however being vested exclusively in the officer presiding in Court

Courts of Sessions.—The practice which grew up under this state of the law, was for the Local Governments to appoint particular persons to be District and Sessions Judges. There are several passages in the Regulation of 1831, and in Act VII of 1835, which assume the existence of such a functionary as a Sessions Judge, but there is no express legislative authority for his existence, nor for the power of the Local Governments to appoint him In the Criminal Procedure Code of 1861, reference is made to a Court of Session; but in Bengal and the North Western Provinces, the power which the Sessions Judges exercised, were derived from the old Courts of Circuit. Neither in Madras, nor in Bombay, were the Sessions Judges directly connected by law with the Court of Session, referred to in the Criminal Procedure Code The practice of appointing separate persons to be District and Sessions Judges, was for a long space of time, utterly without authority. But it continued after the repeal in 1868 of the Regulation of 1831, and Act VII of 1835, to which apparently it traced its existence. After that repeal, the only law under which a Sessions Judge could be appointed, was the Regulation of 1829. It was under this state of things that Mr. Fitz James Stephen introduced into the Legislative Council, the Bengal Sessions Courts Act of 1871. It provided for

the appointment of Sessions Judges, and Additional Sessions Judges by the Local Governments in Bengal and the North-Western Provinces, and confirmed the existing appointments. It was repealed in 1872, the Criminal Procedure Code of that year constituting all the Criminal Courts of the country.

**Administration of Criminal Justice in Madras and Bombay.**—In Madras a Criminal system similar to the one in Bengal, was introduced in 1802. Magistrates and Assistant Magistrates were appointed with power to apprehend and in light cases to inflict petty punishment. Four Courts of Circuit were established, and a Chief Criminal Court consisting of the Governor and Council. In 1827, Assistant Judges were appointed, and then were constituted Joint Criminal Judges of them Zillas Principal Sudder Ameens were appointed, without jurisdiction over Europeans and Americans. Trial by jury was ordered to be gradually introduced. The Madras Courts of Circuit were abolished in 1845, and the Judges of the Zilla Courts were directed to hold permanent Sessions. Natives might be called in to assist, either as assessors, or as a jury.

In Bombay in 1797, Criminal Courts were established on principles similar to those as in Bengal Mahomedan Law did not generally prevail in Bombay. Hindus were tried by their own criminal law, Parsis and Christians by English law. In 1827, the Code was passed revising former Regulations. Magistrates and Police-officers apprehended offenders, and punished for slight offences. Zilla Judges and Assistant Zilla Judges exercised criminal jurisdiction, the Court of Circuit held by one of the

Fouzdari Adawlat Judges, retaining cognizance of the most heinous offences A Special Court was also established for the trial of political offences In 1880 the Provincial Court of Circuit was abolished, and the Criminal Judges were vested with the powers of Sessions Judges and Courts of Circuit Joint sessions Judges were appointed under Act XXIX of 1845 In 1841, it was enacted that crimes against the State should be cognizable by ordinary tribunals

**Nizamat Adawlat for the North-Western Provinces**—A Court of Nizamat Adawlat was constituted for the North Western Provinces in 1831, possessing the same powers as were vested in the Nizamat Adawlat at Calcutta

**The Police-System**—In 1793, the land-holders who were bound to keep up establishments of Thanadars and Police-officers were required to discharge them, officers being *appointed on the part of Government to superintend the police of the country. The Magistrates divided their Zillas into police-jurisdictions, each of which was guarded by a Daroga with establishment of officers, whose duty was to apprehend offenders and send them to the Magistrates. The cities were divided into Wards, and guarded by Darogas, who were subject to the authority of the Kotwals of each city Further, the Judges of the Zilla and City Courts were declared to be Magistrates of the Zilla or City, and the public gaols were placed under their charge Shortly afterwards Assistants, were appointed to the Magistrates In 1807, the Magistrates were given an extended jurisdiction, and in 1808 a Superintendent of Police was appointed. In 1810

Government [redacted] authorised to appoint other persons, not being Zilla or City Judges, to exercise with them the office of Joint Magistrates. In 1818, then jurisdiction was extended, and they were empowered to try offenders charged with burglary and theft.

Thus there were, (1) the Joint and Assistant Magistrates, (2) the Superintendents of Police, (3) the Darogas, (4) the Mohurrahs, second officers of the Thana, whose duty being to preserve the records, and write reports, and to exercise the powers of the Darogas in the absence of the latter, (5) the Jamadars, whose duty being to see that the Barakandazes were in attendance, and that all prisoners and property brought to the Thana, were duly guarded, (6) the village watchmen.

In 1829, the Courts of Circuit were abolished, and the magistracy and police were placed under the superintendence and control of Commissioners of Circuit, and the office of the Superintendent of Police was abolished. In 1837, however, the Superintendents were reappointed.

In Benares &c, the old police-arrangement was maintained up to 1807, when the Bengal System was introduced.

**Police in Madras and Bombay**—In Madras the Native system was retained up to 1816, when heads of villages aided by village watchers, were to discharge the duties of policemen The Tashildar was the head of the Police of the District. The Magistrates and their Assistants were generally charged with the maintenance of peace.

In Bombay, Police system was framed on the same plan [redacted] in Madras. In 1820, a Sudder Fouzdari Adawlut

was established at Surat, consisting of four Judges who were directed to go on circuit. By the Revised Code in 1827, the duties of the police were directed to be conducted by the Judge and Collector of each District, the District Police-officer, and the heads of villages The Magistrates and their Assistants were empowered to apprehend all persons charged with crimes or offences

Reform of the Police System —The earliest attempts at reform of the police system, were made in the Presidency Towns, by appointing Superintendents of Police separate from the Magistrate, and appointing non official Justices of the Peace, Native and European. The first attempt to reform the Mofussil-Police, was made in Sind, by Sir Charles Napier, who drew up a plan on the model of the Irish Constabulary, of which the characteristics were —(1) separate organisation, (2) complete severance of police and judicial functions, (3) complete subordination to the general Government, (4) discipline, so far as was necessary to effective organisation Lord Ellenborough ordered its extension to the North-Western Provinces, Sir George Clerk in 1847, in Bombay, and Sir Henry Lawrence, in the Punjab, though with some alterations. This system was introduced in Oudh in 1858 by Colonel Bruce, and in Madras in 1859.

Finally Act V. of 1861 was passed. Under it the entire Police establishment under a Local Government, is enrolled as one police-force, under the superintendence of the Local Government, while its administration in each general Police District is vested in an Inspector-General and his subordinates; and throughout the local jurisdiction of the Magistrate of a District, it is vested in a Dis-

ti ct Super'ntendent an h's subord nates, subject to the Magistiate The duty of a Police-officer is,-(1) to execute all oideis and waiiants, (2) to collect and communicate intell gence affecting the public peace, (3) to prevent the commission of offences, and public nu'sances, (4) to detect and bring offenders to jus.ice

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## CHAPTER V.

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### *The Privy Council*

Early History of the Privy Council—For a long period in the early h story of England, theie was a Great Council oi Pailiament on the one side, and a Select Council wh ch surronnde l the King, on the other. Legislative and Judicial i ghts belonged to the Laigei Assembly, but were constantly exeicised by the Smallei Council. The assem bling of the Larger Council, however, gradually fell into disuse. Towaids the close of the 12th century, the thiee Superioi Couits of Common Law, with purely secular jurisdiction were establis ied. In couise of time, the Privy Council, althoug i it inhei ted strong claims to appellate jui sdict on, and a power, by v itue of Roya' pierogative, to interfere with the proceedings of the Court, was obl ged to abstain fiom violating their independence. The insecure state of society at that time, lequired its constant interference, and its authority was increased duiing the Wais of the Roses Besides the Common Law

Courts, there arose the Court of Chancery, with an extensive equitable jurisdiction, mostly exercised by Ecclesiastical Chancellors, and a right to interfere with the course of law. The Privy Council and the Court of Chancery were for a long period, closely connected. At the end of the 14th century, the latter established its independence of the Privy Council. Further than that, the Great Council of older times developed into a Parliament, and the House of Lords reconstituted themselves the High Court of English justice. The Commons also aspired to share in the supreme judicial authority. The growth, therefore, of Parliament, of Chancery, and of the Common Law Courts, tended strongly to restrict the authority of the Privy Council, to the discharge of purely executive functions

With the rise of the Tudors, the Privy Council, under the name of the Star Chamber, assumed a power of adjudicating in all causes that might concern the state of the Commonwealth. At this time, it achieved a most unconstitutional triumph over the House of Lords; and it drew into its own hands, and never afterwards lost, the exclusive adjudication of appeals from foreign and colonial dependencies of the Crown, and from the Channel Islands. *Appeals were first granted from Jersey in 1672.* The Act XVI. of Charles I. abolished the Star Chamber, and the whole of its cognate jurisdiction; and the civil jurisdiction of the Privy Council was *declared to be a* usurpation contrary to the laws of the land. Even the fervid loyalty of 1660 was unable to restore to the Privy Council, any portion of its equity or criminal jurisdiction in England.

Present Power of the Privy Council. The Privy Council has now the only right of examining and committing for high treason, without the power of punishment, and of granting charters. These, together with its civil jurisdiction over the Colonies, and its right to entertain appeals from the Ecclesiastical and Admiralty Courts in England, alone remain of its former judicial authority The result is that the House of Lords has regained, since the Restoration, the whole of the appellate jurisdiction over the English Courts of Law and Equity.

Right of Appeal to the Privy Council from the judgments of the Courts of India.—The first occasion, upon which the right of appeal was granted, by Royal Charter, to the Privy Council, from the judgments of the Courts of India, was in 1726, viz—From the Mayor's Courts, first to the Governor and Council, and then to the Privy Council, where the amount in dispute exceeded Rs. 4000. The same right was reserved from the judgments of the Supreme Court of Bengal, and from the Recorder's Courts, and the Supreme Courts of Bombay and Madras. In 1781 an appeal was given from the decisions of the Governor-General and Council, acting as a Civil Appeal Court, in cases over £ 5000 Rules and orders were framed by the Supreme Court to regulate the procedure of the appeals. The Sudder Court has no such power, and consequently Regulation XVI of 1797 was passed for the purpose, and limited the right of appeal in point of time to a period of six months from the date of the judgment, and in point of value to cases of the value of Rs. 50000. In 1818 the right of

appeal from the Sudder Courts of Madras and Bombay to the Privy Council was established; and the latter had a right to reject or receive appeals

With regard to the power of the Privy Council to entertain appeals, and of the suitor to prefer them, the general principle is, that the Crown has an inherent general right to admit appeals, but it had delegated to the Colonial Legislature, the duty of framing provisions on the subject of appeals, and had thus limited the prerogative right to receive all kinds of appeals. It has been settled that in cases of felony, when the Supreme Courts in India have not granted leave to appeal, the Privy Council can not advise the Crown to grant such relief.

It appears that in the sixty years which elapsed from the establishment of the Supreme Court to the Statute of William IV which constituted the Judicial Committee of the Privy Council; only 50 appeals were instituted, and these were chiefly from the Supreme Court.

Judicial Committee of the Privy Council.—In 1833 an Act of William IV was passed, and under it a permanent Judicial Committee was appointed for the disposal of appeals The Committee was composed of the President of the Council and the Lord Chancellor, and several of the Judges of the highest rank, with power to the Sovereign to add any two Privy Councillors. It was empowered to review all sentences formerly appealable to the High Court of Admiralty, or to the Commissioners. In addition to that, the entire appellate jurisdiction of

the Sovereign in Council was directed to be exercised solely by the Judicial Committee, and power was given to the Crown to refer to it, any such other matters whatsoever, as His Majesty should think fit.

The Privy Council have power to determine, or direct the examination of witnesses, at discretion, to remit the cause to the Court below for rehearing, and to direct issues to be tried in any Court in His Majesty's dominions abroad

**Rules relating to appeals from the Courts of India.**—In 1838, an order in Council was issued, which limited appeals from the Sudder Courts in India, in point of time to six months from the date of judgment, and in point of value to Rs 10000, instead of Rs. 50000. In 1846 an Act was passed, which provided that from the commencement of 1846, all appeals admitted by the Sudder Courts should be taken to be abandoned and withdrawn by consent of parties, unless some proceedings should be taken in England within two years after the arrival in England of the transcript.

In 1863 an Indian Act was passed with reference to certain appeals not regularly provided for. It provided that such appeals should be admitted where the subject-matter in dispute amounted to Rs. 10000, or when the Court which pronounced the judgment or order, declares that the case is a fit one for appeal.

The Charters of the High Courts give a right of appeal in any matter, not being of criminal jurisdiction, from any final judgment, decree, or order of those Courts made on appeal, or made in the exercise of original jurisdiction by a majority of the full number of